

## H-3100-1 - OIL AND GAS LEASING

CHAPTER 1 - DECISION, APPEAL, AND PROTEST PROCEDURES FOR OIL AND GAS LEASINGKeywordsI. Decision Preparation and Processing

## DECISION

A decision is a written document, signed by a BLM official under delegated authority, which disposes of a stated issue or issues in a case situation. It is BLM policy to issue timely decisions in mineral case actions in order to secure compliance with laws and regulations, and to further management objectives. Uniform application of the law and provisions of rights of appeal are vital to the oil and gas leasing program. Decisions are used to inform interested parties about BLM actions, to document records of actions, and to give authority and finality to action steps. Decisions may be issued on the initiative of the Bureau or in response to representations by parties outside the BLM.

A. Categories of DecisionsDECISION  
TYPES

Oil and gas decisions fall into three categories:

1. Approval. Approval or granting documents extend rights or privileges to named beneficiaries.

2. Adverse. Adverse decisions deny rights or privileges sought. The appeals paragraph must be stated in these decisions and Form 1842-1 attached. (See Illustrations 1 and 2.)

3. Conditional. Conditional decisions require that specified conditions be met before approval or denial is made. (Examples are submission of additional evidence, payment of fees, and execution of stipulations.) Interlocutory language is inappropriate for leasable minerals decisions and is not to be used. When a situation calls for additional information, the decision issued should state: a) the information requested; b) the time allowed for its submittal; and c) that if the information is not received within the specified timeframe, the offer or application will be rejected without further notice. The applicant or offeror must be advised that the decision will be final 30 days after it is received unless it is appealed or the requested information is timely received. The appeals paragraph is to be provided in the decision, making it unnecessary to issue a second decision.

CONDITIONAL  
DECISION

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Keywords

The use of penalty clauses in conditional decisions is usually discretionary. The primary value of penalty clauses is to fix time limits within which stated conditions must be met. Where timely compliance is not made, the BLM can conclude the action without further notice (decision should state "without further notice from this office") or referral to the affected party, provided that the decision so states. Some time periods for compliance are fixed by law or regulation and one must observe the law or regulations in all such cases. Where a decision offers a party the option of complying or appealing, the time for filing a notice of appeal cannot be more than 30 days. That is, the appeal must be received in the proper BLM office within 30 days of receipt of the decision. No extension of time will be granted for filing the notice of appeal. The grace period for filing documents is authorized in 43 CFR 4.401(a). An Authorized Officer may rescind a decision in order to consider additional factors or to correct an error made by BLM. There is no authority to waive or extend the 30-day period for filing notices of appeal from Bureau decisions.

PENALTY  
CLAUSE

APPEAL  
PERIOD

GRACE  
PERIOD

Approval and adverse actions should not be combined into one decision. If these two actions are combined into one decision and the adverse action is appealed, the entire case is held up pending the outcome of the adverse action. In the meantime, the approval action cannot be acted upon.

B. Use of Notices

Use of a notice is not interchangeable with the use of a decision. Each of these documents serves a specific function. A notice format is to be used when general information is to be distributed to an individual or a specific group, such as the "Notice" that was issued in early 1984 notifying the public of the suspension on the processing for approval of oil and gas small acreage partial lease assignments.

NOTICE

An adverse party, as it relates to a decision, is someone who is not a party to the decision, but someone who may be adversely affected by the decision. The adverse party would be listed separately in the body of the decision (see Illustration 1).

ADVERSE  
PARTY

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KeywordsC. Decision Heading Format

Prepare a decision in the format shown in Illustration 1.  
In all decisions, show in the heading:

DECISION  
FORMAT

1. Serial number, assigned in accordance with Manual Section 1274.
2. Subject function code or case type, determined in accordance with Manual Section 1220.
3. Name(s) of interested parties of record, e.g., lessee, protestee.
4. Action(s) taken, e.g., lease cancelled, lease offer rejected, lease offer rejected in part.

Generally, the laws, regulations, or other decisions should be quoted verbatim, rather than summarizing or paraphrasing, unless the quote is too long. In that instance, use a footnote, if feasible. If summarizing or paraphrasing, use extreme caution to avoid changing the meaning or intent of the quotation. Refer only to the latest issue of Title 43 of the Code of Federal Regulations, unless the regulation has been omitted from the current issue but is still being used for cases where the previous regulation still applies.

For older actions, use the regulations effective when the application was filed, as long as they are still applicable and the law has not been repealed.

Use care in citing precedent decisions to be sure the decision being cited is applicable and will support the instant decision in the manner it is being used. If the issue or issues are not identical to the decision being written, that fact should be addressed with a brief, but complete, rationale given for its use. Be sure that the precedent decision is read thoroughly and was not issued to be used only to solve one particular situation. Use the correct citation style. Avoid citations when the latest case citation includes earlier citations applicable to the issues in the instant case.

CITING  
PRECEDENT  
DECISIONS

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Keywords

Use footnotes if more than two or three decisions need to be cited. If you need to cite at length from a decision or a statute, use a footnote rather than cluttering up the body of the decision with lengthy quotes. Footnotes should also be used as an additional explanation of a comment or statement in the body of the decision when the explanation would bog down the decision's basic language or the point being made in the decision. See Illustration 3 for further information on writing decisions.

## FOOTNOTES

Fact sheets can be enclosed telling the party, in general terms, what the requirements are for the type of action filed.

## ENCLOSURES

Circulars containing reprints of the regulations are helpful and save quoting at great length from the regulations. You may wish to underscore the pertinent line or paragraph to emphasize the part you want the reader to note.

Use other printed formats and materials wherever applicable, to avoid repeating all the information in the decision.

BLM Manual 1845, Legal Source and Research Materials, contains a compilation of information concerning legal reference materials used in adjudication throughout the BLM. Another useful reference book is, "Finding the Law, A Workbook on Legal Research for Laypersons," by Al Coca, for sale by the Government Printing Office.

CITING  
REGULATIONS  
AND OTHER  
LEGAL  
REFERENCESD. Decision Process

This Handbook Section provides guidelines for processing decisions. If the action being taken is adverse to the party, the appeals paragraph should be included. If the decision is entirely favorable to the party, the appeals paragraph should not be used. If there is a time limit set in the decision, it should be sent by certified mail, return receipt requested.

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Responsible Official	Step	Action	Keywords
Docket	1.	Pull case file(s) for Adjudication.	
Adjudication	2.	File all backup documentation to support the decision to be issued in the case file.	PREPARING DECISION
	3.	Prepare the appropriate type decision for signature with sufficient number of copies (see Illustration 3).	
ALMRS Data Entry	4.	Note ALMRS of action being taken by decision. Return case file to Docket.	AUTOMATED NOTATION
Docket	5.	Prepare a future action suspension card if future action is required.	

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II. Appeals and ProtestsA. GeneralKeywords

The Interior Board of Land Appeals (IBLA) was created as a result of a 1970 Departmental reorganization. Review by the IBLA of a BLM decision replaces the former two-step appeal to the BLM Director and the Secretary. The IBLA is the sole judge of matters it will entertain or summarily dismiss. Where an interested party is adversely affected, the IBLA entertains an appeal whether or not the right is stated in the decision. The regulations covering rules of practice currently provide that the decision of the IBLA "shall not be subject to any further appeal in the Department." The decision should cite the appropriate regulations. This is sufficient finality to allow an aggrieved party to proceed to the next step in an appeal, the Federal courts.

IBLA

A protest is distinguished from an appeal in that it is generally presented before a final decision has been made. Appeals are received after a final decision. The answer to a protest may or may not be appealable. Protests may be submitted by anyone to any BLM office, although it is preferable to present them to an office having jurisdiction over the proposal. No special system is used to track protests, but the Authorized Officer making the ultimate decision must be aware that a protest has been received. You are encouraged to discuss both formal and informal protests with protestees in an attempt to circumvent subsequent frivolous appeals.

PROTEST

No decision of the IBLA which is subject to judicial review shall result in oil and gas lease issuance until the expiration of the period allowed for appeals. This period is fixed at 90 days. However, a lawsuit filed at the end of this period may not come to the attention of the appropriate officials within that time. Thus, whenever the IBLA issues a decision which denies an appellant's claim to a lease or which grants an appellant's claim to a lease to the detriment of the leases favored by the appealed State Office decision, a period of 120 days must be allowed to pass between the date of the IBLA opinion and lease issuance.

JUDICIAL  
REVIEW  
WAITING  
PERIOD

During the final 30 days of this period, all steps short of lease issuance (i.e., posting of parcels, request for rental, etc.) may be taken.

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Keywords

If an appeal of an IBLA decision is filed, the appropriate State Director should be notified directly by the Regional Solicitor. In that case, lease issuance must be delayed pending the outcome of the appeal.

Just because a document is labeled "appeal" or "contest" does not mean that it must be treated as one. The only parties who can file an appeal are those parties listed on the decision document either as a party to the decision or as an adverse party. All others must be treated as a "protest."

APPEAL

The regulations at 43 CFR 4.410 provide that any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management shall have a right to appeal to the Board of Land Appeals. The BLM Manual Section 1841.15 states that "Parties to BLM decisions either have or do not have the right of appeal by regulation." Therefore, BLM decisions may neither grant an appeal right where it does not exist nor withhold it where it does exist. There is no option to the contrary, and in all decisions, the right of appeal must be stated where it is obvious or apparent. In multiple-party decisions, the parties having the right of appeal and any adverse parties to be served must be identified. Decisions from which an appeal may be taken must be accompanied by Form 1842-1 (see Illustration 2). Decisions approved by the Secretary, however, are not subject to appeal.

RIGHT OF  
APPEAL

The appeals paragraph is standardized to read as follows:

You have the right to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and the enclosed Form 1842-1. If an appeal is taken, your Notice of Appeal must be filed in this office so the case file can be transmitted to the Board. A copy of your Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served on the Office of the Solicitor as shown on Form 1842-1. It is also requested that you send a copy of any statement of reasons, written arguments, or briefs to the office issuing the decision appealed. In taking an appeal, there must be strict compliance with the regulations.

STANDARD  
APPEALS  
PARAGRAPH

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B. Processing Appeals

This section provides guidelines for handling appeals. Any party adversely affected by a decision has the right to appeal.

Responsible Official	Step	Action	Keywords
Receiving Clerk	1.	Time and date stamp appeal. Appeal must be filed in the proper BLM State Office within 30 days after date of service (no extension granted). See 43 CFR 4.411. A 10-day grace period will be allowed pursuant to 43 CFR 4.401(a).	RECEIVING DATE OF APPEAL
Docket	2.	Pull case file(s) for Adjudication.	
Title Records	3.	Record current status of plat for case file.	CURRENT STATUS
Adjudication	4.	Copies of all documents pertinent to appeal must be filed in case file, such as finding of facts and decision from which appeal is taken, and proof of service.	PROCESSING APPEAL
	5.	Prepare form cover letter (see Illustration 4) to transmit case file to IBLA.  Appellant does not need to state reasons for appeal at this time, only that there is an appeal. Appellant has 30 days after filing Notice of Appeal to file statement of reasons to IBLA.	
	6.	Transmit appeal promptly to IBLA, by certified mail, within 5 working days after it is received in the State Office.  Once an appeal is filed, BLM can take no further action on issues being appealed.	
	7.	Send copies of transmittal, appeal letter, and the decision to Regional Solicitor's Office with one copy also sent to WO (620).	NOTIFY SOLICITOR'S OFFICE
	8.	Send copies to surface management agency (SMA), if other than BLM.	NOTIFY SMA



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Responsible Official	Step	Action	Keywords
ALMRS Date Entry	9.	Note ALMRS that case file was sent to IBLA.	NOTE RECORDS OF APPEAL TO IBLA
Docket	10.	Prepare dummy case file containing at least a copy of decision from which appeal was made and copy of transmittal letter to IBLA and place on the shelf.	

C. Processing Protests

This Handbook Section provides guidelines for handling protests. Any party who is not a party to the decision or an adverse party named in the decision may protest.

Receiving Clerk	1.	Time and date stamp protest and send to Docket.	PROTEST RECEIVED
Docket	2.	Attach protest to case file(s) and send case to Adjudication.	
Adjudication	3.	Determine if protestant is "adversely affected" or an "aggrieved party."	PROCESSING PROTEST
		Determine if protest has been timely filed.	
		If the above have not been met or the protest is considered frivolous, dismiss the protest by decision. Authorized Officer may determine that it is not appropriate to include the appeals paragraph.	
		If above are met, consider merits of protest based on evidence submitted. Issue a decision and allow 30 days for the right of appeal.	
		a) If the protest is upheld, issue decision notifying lessee or applicant citing regulation used in making determination.	PROTEST UPHELD

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Responsible Official	Step	Action	Keywords
		b) If the protest is dismissed, issue decision to protestant citing reasons for dismissal. Always provide any adverse party with a copy of the decision. Allow 30 days for the right of appeal.	PROTEST DISMISSED